

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

MARK NELSON,

Plaintiff,

v.

Case No. CV 10-6385-ST

OPINION AND ORDER

**MICHAEL J. ASTRUE, Commissioner
of Social Security,**

Defendant.

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SIMON, Judge:

On January 4, 2012, Magistrate Judge Janice M. Stewart filed Findings and Recommendations in this case (doc. # 16). Judge Stewart recommended that the application for fees pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d) be granted in the amount of \$1,527.61 and that costs be awarded in the amount of \$368.96. No objections have been filed.

Under the Federal Magistrates Act, the court may “accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If, however, no objections are filed, the Magistrates Act does not prescribe any standard of review. In such cases, “[t]here is no indication that Congress, in enacting [the Magistrates Act] intended to require a district judge to review a magistrate’s report[.]” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Rule 72(b) of the Federal Rules of Civil Procedure recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No objections having been made, the court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Stewart’s findings and recommendations for clear error on the face of the record. No such error is apparent.

Accordingly, I ADOPT Magistrate Judge Stewart's Findings and Recommendation (docket # 16). Plaintiff’s Motion for Attorneys Pursuant to the EAJA (doc. # 13) is GRANTED in the reduced sum of \$1,527.61. Plaintiff is awarded costs in the amount of \$368.96.

IT IS SO ORDERED.

DATED this 3rd day of ^{February} January, 2012.



Michael H. Simon
United States District Judge